

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
NO: 4:13-CR-00028-BR

UNITED STATES OF AMERICA

v.

LARRY D. HILL JR.

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ORDER

This matter is before the court on defendant's letter dated 18 October 2016. (DE # 85.) In the letter defendant states that he was recently informed that the court-ordered restitution of \$4,973,310 "has bloomed to over 6.3 million dollars due too fee's [sic] and penalties." Defendant requests that the restitution be reduced to the amount originally ordered and the court order a "freeze" on any fees and penalties.

By judgment entered 4 February 2014 and as part of defendant's sentence, the court ordered defendant to pay \$4,973,310 to the Internal Revenue Service ("IRS"). (DE # 52, at 6.) The court further ordered the interest requirement on the restitution waived based on the determination that defendant did not have the ability to pay interest. (Id.)

To the extent the letter is deemed a motion to reduce restitution, the court recognizes that under 18 U.S.C. § 3664(o),

A sentence that imposes an order of restitution is a final judgment notwithstanding the fact that—

- (1) such a sentence can subsequently be—
 - (A) corrected under Rule 35 of the Federal Rules of Criminal Procedure and section 3742 of chapter 235 of this title;
 - (B) appealed and modified under section 3742;
 - (C) amended under subsection (d)(5); or
 - (D) adjusted under section 3664(k), 3572, or 3613A; or
- (2) the defendant may be resentenced under section 3565 or 3614.

The Court of Appeals for the Fourth Circuit has summarized this section as follows.

Rule 35 allows correction of a sentence within 14 days of its imposition when an error “resulted from arithmetical, technical, or other clear error” or modification of a sentence for the defendant's substantial assistance to the government. 18 U.S.C. § 3742 concerns an appeal of a sentence. 18 U.S.C. § 3664(d)(5) pertains to victim losses that the district court cannot ascertain at the sentencing hearing. 18 U.S.C. § 3572 concerns adjustment of payment of fines. 18 U.S.C. §§ 3613A and 3614 concern a defendant's default on a payment of a fine or restitution. And, 18 U.S.C. § 3565 pertains to a defendant's violation of her probation.

United States v. Grant, 715 F.3d 552, 557 (4th Cir. 2013). None of the cited rules or statutes are applicable here, and therefore, the court cannot reduce the restitution in any way.

As for any fees and penalties that the IRS might have assessed on the amount owed it, any dispute over that is between defendant and the IRS.

Defendant's motion is DENIED.

This 14 December 2016.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is positioned above a horizontal line.

W. Earl Britt
Senior U.S. District Judge